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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

G. Ruppert PL 1

FILE: B-191289

DATE: June 23, 1978

MATTER OF: Com-Data, Inc.

DIGEST:

Federal Communications Commission (FCC) contracting officer's determination of nonresponsibility based on preaward survey concluding that bidder, small business concern otherwise in line for award, does not have capacity to perform required work must be referred to appropriate SBA official for consideration under certificate of competency program.

Com-Data, Inc., a small business, protests the award of a contract for providing computer output microfiche (COM) services to Frederick Data Services under invitation for bids (IFB) No. 78-05, issued December 8, 1977, by the Federal Communications Commission (FCC). The services were to be provided on a requirements basis for fiscal year 1978, with options to extend for fiscal years 1979 and 1980.

Five bids were received and the low bid was submitted by Com-Data. However, after reviewing a preaward survey which did not recommend award to Com-Data, the contracting officer made a determination that Com-Data was not a responsible firm. On February 8, 1978, contract No. FCC-0252 was awarded to Frederick Data Services which was determined to be the next lowest responsible bidder. Com-Data protested the award in a letter to our Office filed February 15, 1978.

Com-Data contends that the award to Frederick Data was improper since the contracting officer failed to refer the question of Com-Data's responsibility to the Small Business Administration (SBA) as required by Public Law 95-89, approved August 4, 1977, for a final and binding determination by the SBA as to Com-Data's responsibility.

The FCC report on the protest discloses that at the time this procurement action was being conducted,

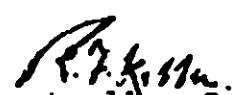
the contracting officer was under the impression that COC referrals to SBA were required only where a negative responsibility determination had been made of the low bidder in a procurement which had been set aside for small business. Since the subject procurement was not a small business set-aside, the contracting officer did not refer the matter of Com-Data's responsibility to the SBA for consideration under COC procedures. The contracting officer admits that he should have sent the question of Com-Data's responsibility to the SBA but contends that this failure was a procedural error and that the SBA would have refused to issue a COC had it been given the opportunity to review the record.

In the present case, the contracting officer failed to refer the question of Com-Data's responsibility to the SBA as required by the Small Business Act, 15 U.S.C. § 637(b)(7) (1976), as amended by Pub. L. No. 95-89 effective August 4, 1977. Under this act, the SBA is empowered to certify conclusively to Government procurement officials with respect to all elements of responsibility. See Bartholomew & Company, B-188454, October 11, 1977, 77-2 CPD 281.

By letter of today to the Chairman of FCC, we are recommending that the contracting officer immediately refer the matter to appropriate SBA officials for possible issuance of a COC. If a COC is issued, and Com-Data, Inc., accepts award for the balance of the contract term, the current contract with Frederick Data Services should be terminated for the convenience of the Government. If a COC is not issued or Com-Data refuses such an award, no further action is required.

Accordingly, the protest is sustained.

Acting


Comptroller General
of the United States